

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL A. GOLDEN and U.S. POSTAL SERVICE,
POST OFFICE, Monsey, NY

*Docket No. 00-59; Submitted on the Record;
Issued November 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Board has duly reviewed the case record on appeal and finds that the Office improperly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

On May 5, 1998 the Office issued a decision accepting appellant's claim for mild bilateral carpal tunnel syndrome, but denying her claim for wage-loss compensation.

By letter dated May 5, 1999 and received by the Office on May 10, 1999, appellant requested reconsideration of the denial of wage-loss compensation. In support of her request, that appellant submitted evidence and argued, there was an unresolved medical conflict in the record which necessitated referral to an impartial medical examiner.

In its May 25, 1999 decision, the Office noted that its most recent merit decision was issued on May 5, 1998 and that appellant's request for reconsideration was dated May 5, 1999 and received by the Office on May 10, 1999. The Office explained that, in order to satisfy the one-year time limitation imposed by 20 C.F.R. § 10.138(b)(2),¹ appellant's request for reconsideration should have been postmarked or dated no later than May 4, 1999. Consequently, the Office concluded that appellant's request for reconsideration was untimely by one day.

The Board finds that the Office improperly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

¹ The Board notes that the Office should have considered the reconsideration request under the new regulations, 20 C.F.R. § 10.607(a). Any error is harmless as the one-year limitation is the same under both regulations.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).² The Office will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.³ When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.⁴

Section 8128(a) of the Federal Employees' Compensation Act⁵ does not entitle a claimant to a review of an Office decision as a matter of right.⁶ This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁷ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority. One such limitation is that the Office will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.⁸ The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁹

The Office issued its last merit decision on May 5, 1998. Appellant's attorney requested reconsideration in a letter dated May 5, 1999. The Office, in its procedures, has indicated that, in determining whether a request for reconsideration is timely filed, the postmark date on the envelope of the request will be used to judge timeliness. If the envelope is not contained in the case record, the date of the letter will be used.¹⁰ In the present case, the record submitted on appeal does not contain an envelope with a postmark. The letter requesting reconsideration, however, is dated May 5, 1999, within one year after the Office's last merit decision. Appellant's request for reconsideration therefore was timely filed within the procedures of the Office. The decision of the Office will be set aside and the case returned to the Office for reconsideration based upon the proper standard to be applied in this case.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.138(b)(2) or 20 C.F.R. § 10.607(a); *see also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

⁴ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁵ 5 U.S.C. § 8128(a).

⁶ *Thankamma Mathews*, *supra* note 4.

⁷ *Id.* at 768; *see also Jesus D. Sanchez*, *supra* note 4.

⁸ 20 C.F.R. § 10.138(b)(2) or 20 C.F.R. § 10.607(a). The Board has concurred in the Office's limitation of its discretionary authority; *see Gregory Griffin*, *supra* note 3.

⁹ *Thankamma Mathews*, *supra* note 4 at 769; *Jesus D. Sanchez*, *supra* note 4 at 967.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(a) (May 1996).

The May 25, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
November 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member